

VOLUNTARY CLEANUP CONTRACT
10-[PCAS#]-RP

IN THE MATTER OF
[SITE NAME] SITE, [COUNTY]
and
[COMPANY NAME]

This Contract is entered into by the South Carolina Department of Health and Environmental Control and [Company Name], pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §§ 44-56-710 through 760 (as amended), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq., and the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-200 (2002), with respect to the facility known as the _____ Site located at [Location], South Carolina ("Site"). The Site includes approximately [Number of acres] acres and is bounded generally by [Location and description of the property]. The Property is identified by County of _____ as Tax Map Serial Number _____; and a legal description of the Property is attached to this Contract as Appendix A.

DEFINITIONS

1. Unless otherwise expressly provided, terms used in this Contract shall have the meaning assigned to them in CERCLA, 42 U.S.C. §§ 9601, et seq., the HWMA, S.C. Code Ann. §§ 44-56-10, et seq., including any amendments, or in the regulations promulgated thereunder, or the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §§ 44-56-710 through 760 (as amended).

- A. "[Company Short Name]" [If more than one company entering into VCC, then use "Respondents" instead and detail each corporate

MODEL CONTRACT
SCOPE OF WORK AND PROVISIONS MAY BE DIFFERENT
BASED ON SITE CONDITIONS

[Company Short Name] shall mean [Official Company Name]. [Company Short Name] is a [state of incorporation] [corporation, limited liability company, partnership, etc.] with its principal place of business located at [address of headquarters].

- B. “Contract” shall mean this Responsible Party Voluntary Cleanup Contract.
- C. “Department” shall mean the South Carolina Department of Health and Environmental Control or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- D. “Pollutant or Contaminant” includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in organisms or their offspring; “contaminant” does not include petroleum, including crude oil or any fraction of crude oil, which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (i) through (vi) of Paragraph (D) of CERCLA § 101, 42 U.S.C. §§ 9601, et seq., and does not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality or mixtures of natural gas and such synthetic gas.
- E. “Contamination” shall mean the presence of a contaminant or hazardous substance.
- F. “Property,” as described in the legal description attached as Appendix A, shall mean that portion of the site which is subject to ownership,

prospective ownership, or possessory or contractual interest of [Company Short Name]. [Provide additional info if needed.]

- G. "Response Action" shall mean any assessment, cleanup, inspection, or closure of a site as necessary to remedy actual or potential damage to public health, public welfare, or the environment.
- H. "The Site" shall mean all areas where a contaminant has been released, deposited, stored, disposed of, or placed, or otherwise comes to be located; "Site" does not include any consumer product in consumer use or any vessel, as defined in CERCLA.
- I. "Voluntary Cleanup" shall mean a response action taken under and in compliance with the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §§ 44-56-710, et seq. (2002, as amended).
- J. "Work Plan" shall mean the plan for additional response actions to be conducted at the Site as described in Paragraph 3 of this Contract.

FINDINGS

2. Based on the information known by or provided to the Department, the following findings are asserted for purposes of this Contract:

- A. [Various details of the Site: past owners, operators, past assessment/remedial activities, Department's past costs of response as estimated through _____]

RESPONSE ACTIONS

3. [Company Short Name] agrees to submit to the Department for review and written approval within thirty (30) days of the execution date of this Contract a Work Plan for the Site that is consistent with the technical intent of the National Contingency Plan. The Work Plan shall be implemented upon written approval from the Department. The Work Plan shall include the names, addresses, and telephone numbers of the consulting firm, the

analytical laboratory certified by the Department, and [Company Short Name]'s contact person for matters relating to this Contract. [Company Short Name] will notify the Department in writing of changes in the contractor or laboratory. The Department will review the Work Plan and will notify [Company Short Name] in writing of any deficiencies in the Work Plan, and [Company Short Name] will respond in writing within thirty (30) days to the Department's comments. The Work Plan and all associated reports shall be prepared in accordance with industry standards and endorsed by a Professional Engineer (P.E.) and/or Professional Geologist (P.G.) duly-licensed in South Carolina and shall set forth methods and schedules for accomplishing the following tasks:

- A. Conduct a Remedial Investigation (RI) to determine the source, nature, and extent of contamination at the Site **[OR modify if a remedial/removal action is planned]**.

- B. Submit to the Department an RI Report (to include a Baseline Risk Assessment or other evaluation of risk to human health and the environment) in accordance with the schedule in the approved RI Work Plan. The Department shall review the report for determination of completion of the RI and sufficiency of the documentation. If the Department determines that the field investigation is not complete, it will send written notification of such to [Company Short Name], and [Company Short Name] shall subsequently conduct additional field investigation to further determine the source, nature, and extent of contamination. If the Department determines that the field investigation is complete but the report is incomplete, the Department shall send to [Company Short Name] a letter indicating that revision of the report is necessary. Within thirty (30) days of receipt of such letter from the Department, [Company Short Name] shall submit a revised report addressing the Department's comments.

C. If determined necessary by the Department, conduct a Feasibility Study to evaluate remedial alternatives for addressing contamination at the Site.

4. [Company Short Name] shall prepare and submit under separate cover from the Work Plan, a Health and Safety Plan that is consistent with Occupational Safety and Health Administration regulations. The Health and Safety Plan is submitted for information purposes only to the Department. The Department expressly disclaims any liability that may result from implementation of the Health and Safety Plan by [Company Short Name].

5. [Company Short Name] shall inform the Department in writing at least five (5) working days in advance of all field activities pursuant to this Contract and shall allow the Department and its authorized representatives, if so desired, to take duplicates of any samples collected by [Company Short Name] pursuant to this Contract.

6. Within sixty (60) days of the execution date of this Contract and once a month thereafter, [Company Short Name] shall submit to the Department a written progress report that must include the following: (A) actions taken under this Contract during the previous reporting period; (B) actions scheduled to be taken in the next reporting period; (C) sampling, test results, and any other data, in summary form, generated during the previous reporting period, whether generated pursuant to this Contract or not; and (D) a description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.

7. All correspondence which may or are required or permitted to be given by either party to the other hereunder shall be in writing and deemed sufficiently given if delivered by (A) regular U.S. mail, (B) certified or registered mail, postage prepaid, return receipt requested, (C) or nationally recognized overnight delivery service company or by hand delivery to the other party at the address shown below or at such place or to such agent as the parties may from time to time designate in writing.

All correspondence, work plans, and reports (including four (4) copies and one (1) electronic form of all work plans and reports) should be submitted to:

The Department: (Project Manager)
South Carolina Department Health & Environmental Control
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201
_____@dhec.sc.gov

[Company Short Name] (Company Contact Information)
Address
City State Zip

PUBLIC PARTICIPATION

8. Upon execution of this Contract, the Department will seek public participation in accordance with S.C. Code Ann. § 44-56-740 (2002) and the technical intent of the National Contingency Plan. [Company Short Name] will pay costs of response associated with public participation (e.g., publication of public notice(s), building and equipment rental(s) for public meetings, etc.).

COSTS OF RESPONSE **IF NOT REIMBURSING PAST COSTS,** **REMOVE FIRST PARAGRAPH OF PARAGRAPH # 9**

9. [Site Specific] [Company Short Name] shall, within thirty (30) days of the execution date of this Contract, pay to the Department by certified or cashier's check the sum of _____ dollars (\$____.____) to reimburse [a portion of?] estimated past costs of response incurred by the Department through _____, 20__ ("Past Costs") relating to the Site. [Company Short Name]'s payment for Past Costs should be submitted to:

The Department: R. Gary Stewart, P.E.
Manager, State Remediation Section

Site Assessment & Remediation
South Carolina Department of Health & Environmental Control
2600 Bull Street
Columbia, SC 29201-1708

As provided for by HWMA, S.C. Code Ann. §§ 44-56-200 (2002) and 44-56-740(B) (2002), [Company Short Name] shall, on a quarterly basis, reimburse the Department for oversight costs of activities required under this Contract occurring after _____. "Oversight Costs" shall mean those costs, both direct and indirect, incurred by the Department in implementing the Voluntary Cleanup Program as related to this Contract and any future amendments thereto. Oversight costs include, but are not limited to, the direct and indirect costs of negotiating the terms of this Contract, reviewing Work Plans and reports, supervising corresponding work and activities and costs associated with public participation. Payments will be due within thirty (30) days of the Department's invoice date. The Department shall provide documentation of its oversight costs in sufficient detail so as to show the personnel involved, amount of time spent on the project for each person, expenses, and other specific costs. Invoices shall be submitted to:

[Company Short Name]: [Addressee's Name]
[Billing Contact Information]

All [Company Short Name]'s payments should reference the Contract number on page 1 of this Contract and made payable to:

The South Carolina Department of Health & Environmental Control

If complete payment of the [past costs of response or of the] quarterly billing of oversight costs is not received by the Department by the due date, interest shall accrue on the principal balance until such time as the entire amount is submitted. The interest applied to such outstanding balance shall be the rate specified by the federal government for any debts owed.

ACCESS

10. **[Include if RP is Property Owner]** The Department, its authorized officers, employees, representatives, and all other persons performing response actions will not be denied access to the Site during normal business hours or at any time work under this Contract is being performed or during any environmental emergency or imminent threat situation, as determined by the Department (or as allowed by applicable law). **[Company Short Name]** and subsequent owners of the Property shall ensure that a copy of this Contract is provided to any lessee or successor or other transferee of the Property, and to any owner of other property that is included in the Site. If unable to obtain access from the Property owner, the Department may obtain access and perform response activities. All Department's costs associated with access and said response actions will be reimbursed by **[Company Short Name]**.

RESTRICTIVE COVENANT

11. **[Include if Company is Property Owner]** If hazardous substances in excess of residential standards exist at the Property after **[Company Short Name]** has completed the actions required under this Contract, **[Company Short Name]** shall enter and file a restrictive covenant. Upon the Department's approval of the items outlined therein, the restrictive covenant shall be signed by the Department and representatives of **[Company Short Name]** and witnessed, signed, and sealed by a notary public. **[Company Short Name]** shall file this restrictive covenant with the Register of Mesne Conveyance or Deeds in the county in which the Property is located. The signed covenant shall be incorporated into this Contract as an Appendix. With the approval of the Department, the restrictive covenant may be modified in the future if additional remedial activities are carried out which meet appropriate clean-up standards at that time or circumstances change such that the restrictive covenant would no longer be applicable. The Department may require **[Company Short Name]** or subsequent owners of the Property to modify the restrictive covenant if a significant change in law or circumstances requiring remediation occurs. **[Company Short Name]** or subsequent owners of the Property shall file an annual report

[Site Name]

VCC-RP between DHEC & **[Company Name]**

with the Department by May 31st of each year detailing the current land uses and compliance with the restrictive covenants for as long as the restrictive covenant remains in effect on the Property. The report must be submitted in a manner prescribed by the Department.

OBLIGATIONS AND BENEFITS

12. The obligations of this Contract apply to and inure to the benefit of [Company Short Name]'s signatories, parents, successors, assigns, and subsidiaries.

13. Nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, past or future, that the Department may have against any person, firm, or corporation not a signatory of this Contract or a signatory's parent, successor, assign, or subsidiary.

14. Subject to Paragraph 16, nothing in this Contract is intended to limit the right of the Department to undertake future response actions at the Site or to seek to compel parties to perform or pay for costs of response actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of response actions that may be taken or be required by the Department in exercising its authority under State and Federal law.

15. Subject to the provisions of Paragraph 16, nothing in this Contract is intended to be or shall be construed as a release or covenant not to sue for any claim or cause of action that the Department may have against [Company Short Name] for any matters not expressly included in this Contract.

16. Upon successful completion of the terms of this Contract and the approved Work Plan as referenced in Paragraph 3 above, [Company Short Name] shall submit to the Department a written notice of completion.

Once the Department determines that [Company Short Name] has successfully and completely complied with this Contract, the Department, pursuant to S.C. Code Ann. § 44-56-740(A)(5) and (B)(1) (2002), will give [Company Short Name] a Certificate of Completion that provides a covenant not to sue [Company Short Name], its signatories, parents, successors, subsidiaries, for the matters satisfactorily completed and specifically covered in this Contract.

In consideration of the Department's covenant not to sue, [Company Short Name] its signatories, parents, successors, assigns, and subsidiaries agree not to assert any claims or causes of action against the Department arising out of activities undertaken at the Site or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Site, except for those claims or causes of action resulting from the Department's intentional or grossly negligent acts or omissions.

17. **[Include if Company is Property Owner]** [Company Short Name] and the Department each reserve the right to unilaterally terminate this Contract. Termination may be accomplished by giving a thirty (30) day advance written notice of the election to terminate this Contract to the other party. Should [Company Short Name] or subsequent owners of the Site elect to terminate, it must submit to the Department all data generated pursuant to this Contract, and certify to the Department's satisfaction that any environmental or physical hazard shall be stabilized and/or mitigated such that the Site does not pose a hazard to human health or the environment that did not exist prior to any initial response action addressing contamination identified in this Contract.

18. The Department may terminate this Contract only for cause, which may include but is not limited to, the following:

A. Events or circumstances at the Site that are inconsistent with the terms and conditions of this Contract; or

- B. Failure to complete the terms of this Contract or the Work Plan; or
- C. Failure to submit timely payments for Past Costs and/or for oversight costs as defined in Paragraph 9 above, or
- D. Additional contamination or releases or consequences at the Site caused by [Company Short Name] its parents, successors, assigns, and subsidiaries;
- E. Providing the Department with false or incomplete information or knowingly failing to disclose material information; or
- F. Change in [Company Short Name]'s or its parents, successors, assigns, and subsidiaries business activities on the Property or use of the Property that are inconsistent with the terms and conditions of this Contract; or
- G. Failure by [Company Short Name] to obtain the applicable permits from the Department for any response actions or other activities undertaken at the Property.

19. Upon termination of the Contract, the covenant not to sue will be null and void. Termination of this Contract by [Company Short Name] or the Department does not end the obligations of [Company Short Name] to pay oversight costs already incurred by the Department and payment of such costs shall become immediately due.

20. The parties to this Contract agree that this Contract governs [Company Short Name]'s liability to the Department for civil sanctions arising from the matters set forth herein and constitutes the entire agreement between the Department and [Company Short Name] with respect to this Contract. The parties are not relying upon any representations, promises, understandings or agreements except as expressly set forth in this Contract.

21. The signatories below hereby represent that they are authorized to and enter into this Contract on behalf of their respective parties.

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH
AND ENVIRONMENTAL CONTROL**

BY: _____
Daphne G. Neel, Chief
Bureau of Land and Waste Management
Environmental Quality Control

DATE: _____

Approved by Office of General Counsel

DATE: _____

[COMPANY FULL NAME]

Signature

DATE: _____

Printed Name and Title

Legal Description of the Property

County of

Tax Map Serial Number